

**CALIFORNIA COASTAL COMMISSION**

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TO: Commissioners and Interested Persons

FROM: Deborah Lee, Deputy Director  
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Charles Posner, Coastal Program Analyst

SUBJECT: Major Amendment Request No. 2-98B to the City of Long Beach Certified Local Coastal Program (For Public Hearing and Commission Action at the October 13, 1998 meeting in Oceanside).

**SUMMARY OF LCP AMENDMENT REQUEST**

The City of Long Beach Local Coastal Program (LCP) was certified by the Coastal Commission on July 22, 1980. The current proposal is the City's second major LCP amendment request for 1998. This LCP amendment request would affect both the Land Use Plan (LUP) policies and implementing ordinances (LIP) portions of the City's certified LCP that are contained in the City's Southeast Area Development and Improvement Plan (SEADIP). The uncertified provisions and geographic areas of SEADIP would not be affected by the current proposal (Exhibit #2). The recently annexed portions of the City (Los Cerritos Wetlands) are not subject to the currently certified City of Long Beach LCP. This LCP amendment request would not affect any of these currently uncertified portions of the coastal zone.

The City has requested this LCP amendment as one of the approvals necessary for the proposed "Marina Shores" shopping center in SEADIP Subarea 29 (Exhibits #3&4). The land use, height, and curb cut standards for Subarea 29 of SEADIP are proposed to be amended to allow the construction of a City-approved 67,930 square foot retail/commercial project [*See Appeal File No. A-5-LOB-98-336/Local Coastal Development Permit No. 9702-18* (Exhibit #4)].

**SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending that the Commission, after public hearing, deny the amendment request to the LUP and LIP as submitted; and then approve, only if modified, the amendment request to the LUP and LIP. The LUP modification is necessary to protect wetlands in the certified LCP area from development not permitted by Chapter 30233 of the Coastal Act. The LIP modification is necessary to limit the proposed height increase only to SEADIP Subarea 29. The suggested modifications begin on PAGE SIX. The motions to accomplish this recommendation begin on PAGE THREE.

## **CONTENTS OF LCP AMENDMENT REQUEST**

As previously stated, the City has requested this LCP amendment in order to allow the construction of a 67,930 square foot retail/commercial project [*See Appeal File No. A-5-LOB-98-336/Local Coastal Development Permit No. 9702-18* (Exhibit #4)]. The City-approved commercial project, referred to as the "Marina Shores" shopping center, is located in SEADIP Subarea 29 (Exhibits #3&4). The proposed LCP amendment would change the land use, height, and curb cut standards for Subarea 29 of SEADIP in order to bring the City-approved shopping center into conformance with the certified LCP. Specifically, the proposed LCP amendment would: 1) add retail uses to the list of allowable uses for SEADIP Subarea 29 which currently allows only commercial office, restaurants, and commercial recreation uses; 2) allow architectural features to exceed the 35 foot height limit by eight feet (up to 43 feet); and 3) allow curb cuts on Pacific Coast Highway and Studebaker Road subject to the approval of the City Traffic Engineer and/or CALTRANS.

The proposed changes to the certified LCP are contained in Ordinance No. C-7528 (Exhibit #7). Resolution No. C-27312 submits the LCP amendment request for certification by the Commission (Exhibit #6). The City Planning Commission held three public hearings for the proposed LCP amendment on June 5, 1997, June 19, 1997, and January 15, 1998. The City Council held two public hearings for the proposed LCP amendment on July 15, 1997 and March 17, 1998. The Long Beach City Council adopted Ordinance No. C-7528 on March 24, 1998. On June 16, 1998, the City Council adopted Resolution No. C-27370 and submitted it to the Commission in order to clarify the City's position in regards to the LCP amendment request and its relation to the recently annexed and currently uncertified portions of SEADIP located within the coastal zone (Exhibit #8). This LCP amendment request is consistent with the submittal requirements of the Coastal Act and the regulations which govern such proposals (Sections 30501, 30510, 30514 and 30605 of the Coastal Act, and Sections 13551, 13552 and 13553 of the California Code of Regulations).

### **STAFF NOTE**

The City of Long Beach Southeast Area Development and Improvement Plan, commonly referred to as SEADIP, is a specific plan that covers the southeast portion of the City of Long Beach and Los Angeles County. In 1980, the Commission certified specific sections and geographic areas of the SEADIP document into the original LCP as both the implementing ordinances (LIP) and Land Use Plan (LUP) policies for this portion of the City. Specific sections and geographic areas of SEADIP were also **not** certified by the Commission for inclusion into the certified LCP.

Therefore, although the City's SEADIP document includes both certified and uncertified standards and geographic areas, this LCP amendment request would affect only the sections of SEADIP that have been certified by the Commission and only the geographic SEADIP area that is currently covered by the certified City of Long Beach LCP (Exhibit #2). The Los Cerritos Wetlands area, which was recently annexed from Los Angeles County into the City of Long Beach, is not within the area covered by any certified LCP. This LCP amendment would not alter the boundaries of the currently certified City of Long Beach LCP (Exhibit #2).

## **STANDARD OF REVIEW**

Because the SEADIP plan contains both land use policies and implementing ordinances, this LCP amendment would affect both the LUP policies and LIP portions of the City's certified LCP. The standard of review for the proposed amendment to the Land Use Plan policies, pursuant to Section 30512 of the Coastal Act, is that the proposed amendment is in conformance with the Chapter 3 policies of the Coastal Act. The standard of review for the proposed amendment to the LCP Implementing Ordinances, pursuant to Sections 30513 and 30514 of the Coastal Act, is that the proposed amendment is in conformance with, and adequate to carry out, the provisions of the certified Land Use Plan (LUP).

## **ADDITIONAL INFORMATION**

Copies of the staff report are available at the South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact Charles Posner in the Long Beach office at (562) 590-5071.

### **I. STAFF RECOMMENDATION**

Staff recommends adoption of the following motions and resolutions:

#### **A. DENIAL OF THE AMENDMENT TO THE LAND USE PLAN AS SUBMITTED**

##### **MOTION**

*"I move that the Commission certify amendment request No. 2-98B to the City of Long Beach Land Use Plan as submitted."*

Staff recommends a **NO** vote which would result in the adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

##### **Resolution to deny the amendment to the Land Use Plan as submitted**

*The Commission hereby denies certification of amendment request No. 2-98B to the City of Long Beach Land Use Plan as submitted and adopts the findings stated below on the grounds that the amended Land Use Plan will not meet the requirements of and does not conform with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; the Land Use Plan amendment as submitted is not consistent*

*with applicable decisions of the Commission that guide local government actions pursuant to Section 30625(c) of the Coastal Act, and certification of the Land Use Plan amendment as submitted does not meet the requirements of Section 21080.5(d)(2)(A) of the California Environmental Quality Act, as there would be feasible alternatives or feasible mitigation measures which would substantially lessen significant adverse effects on the environment.*

**B. APPROVAL OF THE AMENDMENT TO THE LAND USE PLAN IF MODIFIED**

**MOTION**

*"I move that the Commission certify amendment request No. 2-98B to the City of Long Beach Land Use Plan if it is modified in conformity with the modifications suggested below."*

Staff recommends a **YES** vote which would result in the adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

**Resolution to certify the amendment to the Land Use Plan if modified**

*The Commission hereby approves certification of amendment request No. 2-98B to the City of Long Beach Land Use Plan and adopts the findings stated below on the grounds that the amended Land Use Plan meets the requirements of and conforms with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act if modified according to the suggested modifications stated in Section II of this report. The Land Use Plan amendment, if modified, is consistent with applicable decisions of the Commission that guide local government actions pursuant to Section 30625(c) of the Coastal Act, and certification of the Land Use Plan amendment as modified meets the requirements of Section 21080.5(d)(2)(A) of the California Environmental Quality Act in that there are no feasible alternatives or mitigation measures which would substantially lessen any significant adverse impacts on the environment.*

*The Commission further finds that if the local government adopts and transmits its revisions to the amendment to the Land Use Plan in conformity with the suggested modifications, then the Executive Director shall so notify the Commission.*

**C. DENIAL OF THE AMENDMENT TO THE LCP IMPLEMENTING ACTIONS AS SUBMITTED**

**MOTION**

*"I move that the Commission reject amendment request No. 2-98B to the City of Long Beach LCP Implementing Actions as submitted."*

Staff recommends a **YES** vote which would result in the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

**Resolution to reject the amendment to the Implementing Actions as submitted**

*The Commission hereby rejects the amendment to the Implementing Actions of the City of Long Beach certified Local Coastal Program, as submitted, for the reasons discussed below on the grounds that it does not conform with, or is inadequate to carry out, the provisions of the Land Use Plan as certified. Approval of the Implementing Actions would not meet the requirements of Section 21080.5(d)(2)(A) of the California Environmental Quality Act in that there are alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the approval of the amendment to the Implementing Actions would have on the environment.*

**D. APPROVAL OF THE AMENDMENT TO THE LCP IMPLEMENTING ACTIONS IF MODIFIED**

**MOTION**

*"I move that the Commission approve amendment request No. 2-98B to the City of Long Beach LCP Implementing Actions if it is modified in conformity with the modification suggested below."*

Staff recommends a **YES** vote which would result in the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

**Resolution to certify the amendment to the Implementing Actions if modified**

*The Commission hereby approves certification of the amendment to the Implementing Actions of the City of Long Beach Local Coastal Program, for the reasons discussed below on the grounds that the amended ordinances, maps, and other implementing actions are consistent with, and adequate to carry out, the provisions of the certified Land Use Plan, as provided in Section 30513 of the Coastal Act, if amended according to the suggested*

*modification stated in Section II of this report. Approval of the Implementing Actions meets the requirements of Section 21080.5(d)(2)(A) of the California Environmental Quality Act in that there are no further feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impacts on the environment.*

*The Commission further finds that if the local government adopts and transmits its revisions to the amendment to the Implementing Ordinances in conformity with the suggested modification, then the Executive Director shall so notify the Commission.*

## **II. SUGGESTED MODIFICATIONS**

Certification of amendment No. 2-98B to the City of Long Beach certified LCP is subject to the following modifications:

- A. Delete all provisions under SEADIP Section B “Responsibility for Construction and Maintenance of Wetlands and Buffers” and replace with the following:**

### **Development in or Near Wetlands:**

The City shall preserve and protect wetlands within the coastal zone. “Wetlands” shall be defined as any area which may be covered periodically or permanently with shallow water, including, but not limited to, saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens. As part of any discretionary review or the required environmental analysis associated with a development proposal in the coastal zone, the applicant shall provide evidence from a qualified biologist whether wetlands exist on the site of the proposed development. If any wetlands are identified on the site, the applicant shall be required to obtain confirmation of the wetlands delineation from the U.S. Fish & Wildlife Service and the State Dept. of Fish & Game and solicit the resource agencies’ recommendation on the appropriateness of the proposed development, the permissibility of the development impacts and any required mitigation.

All proposed development must conform to the following<sup>1</sup>:

- Within the coastal zone the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following (1-8):

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<sup>1</sup> Section 30233 of the Coastal Act of 1976 (modified for LCP).

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
  - (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
  - (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411 of the Coastal Act, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.
  - (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
  - (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
  - (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
  - (7) Restoration purposes.
  - (8) Nature study, aquaculture, or similar resource dependent activities.
- Where it has been determined that there is no feasible less environmentally-damaging alternative and the proposed impacts are one of the eight allowable uses specified above, the diking, filling or dredging of open coastal waters, wetlands, estuaries and lakes shall be mitigated to minimize adverse environmental effects through habitat replacement, restoration and enhancement activities. There shall be no net loss of wetland acreage or habitat value as a result of land use or development activities. Mitigation ratios may vary depending on the specific site conditions; location of habitat areas; the amount of impacts; the nature, quality and uniqueness of the affected habitat; resource agency consultation; precedential coastal development permit decisions and other factors. However, typical

mitigation ratios are 3:1 for riparian areas and 4:1 for saltmarsh habitats. Specifically, when wetland impacts are unavoidable, replacement of the lost wetland shall be required through the creation of new wetlands at a ratio determined by the appropriate regulatory agencies, but in any case at a ratio of greater than one acre provided for each acre impacted so as to ensure no net loss of wetland acreage. Replacement of wetlands on-site or adjacent, within the same wetland system, and in-kind mitigation shall be given preference over other mitigation options.

- Development located adjacent to wetland habitat areas shall not adversely impact the wetlands. A 100 ft. buffer shall be provided between development and wetland habitats and a 50 ft. buffer shall be provided between development and riparian areas unless, in consultation with the U.S. Fish & Wildlife Service and/or the State Dept. of Fish & Game, it is determined that a reduced buffer is sufficient. Uses and development within buffer areas shall be limited to minor passive recreational uses or other improvements deemed necessary to protect the habitat and shall be located in the portion of the buffer area furthest from the wetland. All identified wetlands and buffers shall be permanently conserved or protected through the application of an open space easement or other suitable device.
- Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.
- In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.
- Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before



approving a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

**B. Modify Item 5 of "Provisions Applying To All Areas":**

5. The maximum height of buildings shall be 30 feet for residential and 35 feet for non-residential uses, unless otherwise provided herein. In Subarea 29, architectural features such as tower elements may be approved up to a height of 43 feet through the Site Plan Review process.

**III. FINDINGS**

The following findings support the Commission's denial of the amendment to the LUP and LIP as submitted, and approval of the amendment to the LUP and LIP modified as indicated in Section II (Suggested Modifications). The Commission hereby finds and declares as follows:

**A. Amendment Description and Background**

The City of Long Beach Southeast Area Development and Improvement Plan, commonly referred to as SEADIP, is a specific plan that covers the southeast portion of the City of Long Beach and Los Angeles County. This LCP amendment request, proposed by City of Long Beach Ordinance No. C-7528 (Exhibit #7), would modify the Commission certified use, height, and curb cut standards that are contained in the SEADIP specific plan. This LCP amendment is driven by a specific development proposal for a retail shopping center called "Marina Shores".

The SEADIP specific plan has a long history. It was originally adopted by the City of Long Beach in 1977, prior to certification of the City's LCP. In 1980, the Commission included part of the SEADIP document into the original LCP as both the implementing ordinances (LIP) and Land Use Plan (LUP) policies for the southeast portion of the City. Some parts of SEADIP were also **not** certified by the Commission for inclusion into the certified LCP.

Large geographic areas covered by SEADIP were deleted from the proposed LCP when the Commission originally certified the City of Long Beach LCP in 1980. The geographic areas that were never incorporated into the certified LCP include the unincorporated portions of Los Angeles County (Los Cerritos Wetlands) and Parcel 11b (Exhibit #2). Other City areas covered by SEADIP are located outside of the coastal zone and therefore are not part of the certified LCP. The policies and standards that apply to those uncertified LCP areas were never certified as part of the certified LCP.

Therefore, the City's SEADIP document includes both certified and uncertified standards and geographic areas. This LCP amendment request would affect only the portion of SEADIP that has been certified by the Commission and only the geographic SEADIP area that is currently covered by the certified City of Long Beach LCP (Exhibit #2). The Los Cerritos Wetlands area, which was recently annexed from Los Angeles County into the City of Long Beach, is not within the area covered by any certified LCP<sup>2</sup>. This LCP amendment would not alter the boundaries of the currently certified City of Long Beach LCP (Exhibit #2). City Council Ordinance No. C27370 (Exhibit #8) clarifies the City's position regarding SEADIP's relation to the certified LCP.

As proposed by the City, this LCP amendment request would modify the use, height, and curb cut standards for Subarea 29 of SEADIP where the City recently approved Local Coastal Development Permit No. 9702-18 for a 67,930 square foot retail/commercial shopping center referred to as "Marina Shores" (Exhibits #3&4). The proposed LCP amendment purports to bring the certified LCP into consistency with this local coastal development permit.

SEADIP Subarea 29 is located within the geographic area covered by the City of Long Beach certified LCP on the seaward side of Pacific Coast Highway (State Route 1) near the boundary between the cities of Seal Beach and Long Beach (Exhibit #1). Subarea 29 is located inland of Marina Drive, the first public road inland from the sea and the primary access road to the Alamitos Bay Marina (Exhibit #1). Subarea 29 is comprised of only two parcels which are separated by Studebaker Road (Exhibit #2). The southernmost parcel is developed with an office building on the bank of the San Gabriel River. The other parcel in SEADIP Subarea 29 is the site of the City-approved Marina Shores project. The waters of Alamitos Bay are approximately 350 feet west of the site of Marina Shores project. The site of the proposed development is currently vacant and surrounded by a chain-link fence.

Local Coastal Development Permit No. 9702-18 for the Marina Shores shopping center was approved by the City Council on March 17, 1998. The Long Beach City Council determined that the project site contained no wetlands. Because the project site is located outside of the Commission's mapped appealable area, the local permit action was **not** noticed as appealable to the Commission. The Commission's mapped appealable area ends at Marina Drive, the first public road inland from the sea. However, on August 13, 1998, the Commission determined that Local Coastal Development Permit No. 9702-18 is appealable under Section 30603(a)(2) due to the fact that a wetland occupies a portion of the project site. Therefore, the Commission established an appeal period commencing on the date of this determination. Local Coastal Development Permit No. 9702-18 has been appealed by two Coastal Commissioners [*See Appeal File No. A-5-LOB-98-336/Local Coastal Development Permit No. 9702-18*]. Therefore, the City-approved shopping center project that is driving this LCP amendment request is also currently before the Commission as an appeal item.

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<sup>2</sup> In 1984, the Commission approved a Local Coastal Program for the Los Cerritos Wetlands with suggested modifications, but the LCP never received final certification. The Commission's approval of the LCP with suggested modifications has since lapsed.

The City's requested changes to the certified LCP are contained in Ordinance No. C-7528 (Exhibit #7). Ordinance No. C-7528, modifying the SEADIP specific plan, was adopted by the Long Beach City Council on March 24, 1998. Resolution No. C-27370, adopted by the City Council on June 16, 1998, clarifies the City's intent in regards to the LCP amendment request and its relation to the recently annexed and currently uncertified portions of SEADIP located within the coastal zone (Exhibit #8).

The LCP amendment, as proposed by the City in Ordinance No. C-7528, would modify the certified portion of the SEADIP specific plan as follows:

### **BUILDING HEIGHT**

Modify Item 5 of "Provisions Applying To All Areas" to allow architectural features to exceed the 35 foot height limit in non-residential developments:

5. The maximum height of buildings shall be 30 feet for residential and 35 feet for non-residential uses, unless otherwise provided herein. In non-residential developments, architectural features such as tower elements may be approved up to a height of 43 feet through the Site Plan Review process.

### **CURB CUTS**

Revise Item 14 of "Provisions Applying To All Areas":

14. (To be deleted and replaced). No additional curb cuts shall be permitted on Pacific Coast Highway, Westminster Avenue, Studebaker Road, or Seventh Street, unless it can be shown that inadequate access exists from local streets. This restriction shall not preclude the provision of emergency access from these streets as may be required by the City.
14. (Proposed). Curb cuts shall be permitted on Pacific Coast Highway, Westminster Avenue, Studebaker Road and Seventh Street subject to the approval of the City Traffic Engineer and/or CALTRANS, where appropriate.

### **PERMITTED USES**

Add commercial retail to list of commercial uses already permitted in Subarea 29 and delete restaurant limit:

#### **SUBAREA 29**

Use: Commercial office, restaurants, commercial recreation and commercial retail uses.

Delete: Restaurant uses shall be permitted only south of Studebaker Road.

As a matter of clarification, the Long Beach City Attorney has indicated in a letter dated May 28, 1998, that the City would not object to a change that would specifically limit all of the above-stated changes to SEADIP Subarea 29 only (Exhibit #9).

## **B. Analysis**

The land use portion (LUP) of the certified LCP contains policies that regulate land use and development within the certified area of the Long Beach coastal zone. The implementation ordinances portion (LIP) of the certified LCP carries out the provisions of the LUP. As previously stated, an amendment to the LUP must conform to Chapter 3 policies of the Coastal Act, and an amendment to the LIP must conform to the certified LUP and be adequate to carry out the provisions of the LUP in order to be certified by the Commission.

This LCP amendment request would affect both the LUP and LIP portions of the certified LCP that are contained in the certified portion of the SEADIP specific plan. The permitted use, building height, and curb cut standards are proposed to be amended for Subarea 29 of SEADIP in order to accommodate a City-approved 67,930 square foot retail/commercial shopping center (Exhibits #3&4).

The following is an analysis of the existing certified SEADIP policies and development standards and the modifications proposed by the City. As previously stated, the City proposes to amend the LCP to modify the Commission certified use, height, and curb cut standards that are contained in the SEADIP specific plan. The City's LCP amendment request, however, fails to address the overriding Coastal Act issue connected with proposed Marina Shores shopping center: project impacts on wetland habitat.

### **Wetlands**

The most controversial issue addressed by the City during the local hearings on the proposed LCP amendment and Local Coastal Development Permit No. 9702-18 was the issue of project impacts on wetland habitat. The City did address the question of whether or not any wetlands exist on the site of the proposed 67,930 square foot retail/commercial shopping center approved by Local Coastal Development Permit No. 9702-18 (Exhibits #3&4). Ultimately, the City determined that no wetlands exist on the site. Because the City found that no wetlands exist, it did not take the next step to review the project for compliance with any certified wetland policies that may or may not be contained in the certified LCP.

However, on August 13, 1998, at a public hearing on this matter, the Coastal Commission determined that wetlands do exist on the project site. On August 14, 1998, two Commissioners appealed the local approval of the Marina Shores project [*See Appeal File No. A-5-LOB-98-336/Local Coastal Development Permit No. 9702-18*]. Furthermore, Commission staff has

determined that the certified City of Long Beach LCP does not contain certified wetland policies that could be applied to the project site in SEADIP Subarea 29 consistent with Chapter 3 of the Coastal Act. The staff recommendation for insertion of a wetland policy into the certified LUP will rectify the gap in the LCP.

At the heart of the wetland question is whether the vegetation and ponding of water on the project site since it was graded in 1993 qualifies as a wetland that is protected by the Coastal Act. The opponents of the City-approved shopping center believe that a wetland is present on the site (Subarea 29), and that the wetland should be protected from development. The project applicant and the City of Long Beach do not believe that the vegetation and ponding water on the site qualifies as a wetland.

The site of the City-approved shopping center (Marina Shores) is a vacant six acre parcel situated on the northwest corner of Pacific Coast Highway (State Route One) and Studebaker Road in southeast Long Beach (Exhibit #3). The site is one block (approximately 350 feet) from the waters of the Alamitos Bay Marina. The marina's public parking lot is located directly across Marina Drive from the site (Exhibit #3). The site is within two blocks of the San Gabriel River and the City of Seal Beach.

According to the applicant's consultants, the site supported wetlands until 1928 when the site and surrounding areas were filled (Exhibit #5). Chevron operated a fuel refinery on the entire site from 1928 to the mid 1970's. The refinery was then demolished. In 1993, the soils on the site were excavated and remediated in order to remove contaminants that were discharged from the refinery. The site was recontoured to its existing topography and a catch basin was graded at the southeast corner of the site which allows water to pond. There are no records of any coastal development permits ever issued by the City or Commission for the remediation or development of the site prior to 1998.

Currently, the site has a depression at the southeast corner that collects drainage from the site and surrounding areas. During the past several winters the site has contained a pond that has attracted several bird species to the site. The EIR for the project lists observed bird species as: American Kestrel, Rock Dove, House Finch, European Starling, Western Gull, American Crow, Ring-billed Gull, Great Blue Heron, and Mallard Duck. The size of the pond varies in response to the levels of rainfall and evaporation during each season. In the past, Commission staff has observed pumps at the site pumping water out of the pond and into the storm drain.

As part of the EIR process, the applicant's consultant conducted its own wetlands determination and submitted it to the City (Exhibit #5). The consultant, Glenn Lukos Associates, reports that the site is partially inundated during the rainy season and that the site supports scattered native hydrophytes (wetland plants) including saltgrass (*Distichlis spicata*), alkali heath (*Frankenia salina*), heliotrope (*Heliotropium curassivicum*), pickle weed (*Salicornia virginica*), and alkali bulrush (*Scirpus maritimus*). The site also supports a population of southern tarplant (*Hemizonia parryi* var. *australis*).

The conclusion of Glenn Lukos and Associates, which is included in the certified EIR for the project, is that the site does not qualify as a wetland under the jurisdiction of the U.S. Army Corps of Engineers or the California Department of Fish and Game. Based on the consultants report, the City Council found that no wetland exists on the site and approved Local Coastal Development Permit No. 9702-18 for the construction of a shopping center on the site (Exhibits #3&4). Because the City found that no wetland exists on the site, Local Coastal Development Permit No. 9702-18 does not require the implementation of any wetland mitigation measures, and the local coastal development permit was not noticed by the City as being appealable to the Commission.

The California Department of Fish and Game, however, was not consulted until after the City had already approved Local Coastal Development Permit No. 9702-18. Subsequent to the City's April 20, 1998 submittal of this LCP amendment request, both the applicant and Commission staff requested that the California Department of Fish and Game issue an opinion on the matter. In June 1998, after visiting the project site, a California Department of Fish and Game staff member estimated that approximately .02 acres of "potential" wetland habitat exists on the site in the form of scattered native hydrophytes (wetland plants) including saltgrass (*Distichlis spicata*), alkali heath (*Frankenia salina*), heliotrope (*Heliotropium curassivicum*), pickle weed (*Salicornia virginica*), and alkali bulrush (*Scirpus maritimus*). However, because of the wetland's small size, low biological productivity, location, and recent history, the California Department of Fish and Game is reticent to issue a determination that an "actual" wetland exists on the site. It has been referred to only as a "potential wetland".

However, the Coastal Commission's definition of a wetland is clear. The Coastal Commission relies on Section 30121 of the Coastal Act when determining what is a wetland. Section 30121 of the Coastal Act states:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

This is the definition upon which the Commission relies to identify "wetlands." The definition refers to lands "...which may be covered periodically or permanently with shallow water..." However, due to highly variable environmental conditions along the length of the California coast, wetlands may include a variety of different types of habitat area. For this reason, some wetlands may not be readily identifiable by simple means. The Commission's Statewide Interpretive Guidelines provide guidance for the sometimes difficult decision whether a site is a wetland (Exhibit #10). The Commission's Statewide Interpretive Guidelines state that the Commission also relies on the presence of hydrophytes and/or presence of hydric soils to make a wetlands determination. The presence of **any one** of the three conditions (water, hydrophytes or hydric soils) can result in a determination that a wetland is present. The California Department of Fish and Game typically provides the Commission with the expertise required in such a determination.

Moreover, Section 13577(b) of the Commission's regulations specifically identifies the criteria for determining the precise boundary of a wetland for purposes of appeal under Section 30603 of the Coastal Act. **Section 13577(b)** states that:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or support the growth of hydrophytes, and shall include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats.

In this case, the Commission determined at the August 13, 1998 opening of the public hearing for Long Beach LCP Amendment No. 2-98B that, according to the Commission's definition of wetlands, a wetland does exist on the site of the proposed development in SEADIP Subarea 29. The Commission's finding that a wetland exists on the site is based on the evidence provided by the applicant and City, and quantified by the California Department of Fish and Game, that both water ponding and hydrophytes have been documented on the project site (See Exhibit #5 p.2). There is no dispute over the evidence that both water and hydrophytes have been found on the site. The only dispute is over the conclusion of whether the site contains a wetland.

The Commission resolves the dispute over the significance which should be attached the presence of water and hydrophytes on site consistent with the definition of wetland contained in Section 30121 of the Coastal Act and Section 13577(b) stated above. Consistent with those provisions, given the undisputed existence of hydrophytes, the Commission finds that **wetlands do exist** on the project site.

Pursuant to Section 30603 of the Coastal Act and Section 13577 of the California Code of Regulations, all areas within one hundred feet of a wetland are included within the Commission's appeal jurisdiction. Therefore, the existence of a wetland on the project site makes the local coastal development permit appealable to the Commission, even though the site may not have contained a wetland when the appeal jurisdiction map was certified in 1980 as part of the LCP certification process.

On August 14, 1998, two Commissioners appealed the local coastal development permit for the proposed shopping center project that is driving this LCP amendment [*See Appeal File No. A-5-LOB-98-336/Local Coastal Development Permit No. 9702-18*]. The primary basis for the appeal is that the City-approved permit does not analyze the proposed project's impacts on the wetland in relation to certified wetland standards.

The Commission will act on Appeal No. A-5-LOB-98-336 (Marina Shores) after it takes action on this LCP amendment request. The Commission will review the proposed shopping center project under the standards and policies of the amended LCP, including the LCP standards and policies

that relate to development in or near wetlands that have been adopted by the Commission as suggested modifications.

The currently certified LCP does not contain any certified wetland policies or standards that apply to SEADIP Subarea 29. SEADIP does contain some policies and standards that relate to development in or near wetlands, but they all apply to the development formerly proposed for the Los Cerritos Wetlands which are located outside of the certified LCP area. None of the wetland standards and policies contained in SEADIP apply to Subarea 29 or any other subareas that fall within the certified LCP.

The certified Long Beach LCP does not contain any wetland development or protection policies either in the main body of the LCP or within the SEADIP specific plan that can be applied to the certified area within SEADIP. The reason for this is that all of the originally identified and mapped wetlands within the City are located outside of the City's certified LCP jurisdiction<sup>3</sup>. No one anticipated the need for a general wetland policy in 1980 when the LCP was certified. Apparently, it appeared as though all of the wetlands within the City of Long Beach were either located within the Commission's area of original jurisdiction, or were addressed with policies specific to each known wetland. The wetland now existing in SEADIP Subarea 29 was not identified as such until this year (1998). All of the wetland development and protection policies contained in the SEADIP specific plan refer specifically to Los Cerritos Wetlands parcels which were intentionally excluded from the certified LCP in 1980.

Therefore, the Commission finds that LCP Amendment Request No. 2-98B must be denied as submitted, and approved only if modified consistent with Section 30233 of the Coastal Act.

**Section 30233 of the Coastal Act States:**

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:
  - (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
  - (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

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<sup>3</sup> . The open ocean and Alamitos Bay submerged areas are seaward of the mean high tide line and therefore within the Commission's area of original jurisdiction. The wetlands located in the Downtown Shoreline area are on former tidelands which are also within the Commission's area of original jurisdiction. The Los Cerritos Wetlands, which have recently been annexed from the County, were intentionally excluded from the certified LCP in 1980 because they were located outside of the City limits.



(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

For the purposes of this section, "commercial fishing facilities in Bodega Bay" means that not less than 80 percent of all boating facilities proposed to be developed or improved, where such improvement would create additional berths in Bodega Bay, shall be designed and used for commercial fishing activities.

(d) Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone,

whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

The Commission also finds that the proposed LCP amendment request is not in conformance with the Chapter 3 policies of the Coastal Act because it does not adequately maintain and enhance marine resources as directed by Sections 30230 and 30231 of the Coastal Act.

**Section 30230 of the Coastal Act States:**

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

**Section 30231 of the Coastal Act States:**

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In order to conform with the Chapter 3 policies of the Coastal Act, the certified LCP must contain provisions to maintain and enhance marine resources, in this case wetlands. Therefore, the LCP amendment request shall be modified to replace the wetland provisions that were formerly proposed for the Los Cerritos Wetlands area outside of the certified LCP with wetland protection standards and policies consistent with Sections 30230, 30231 and 30233 of the Coastal Act. The proposed LCP amendment request does not contain any measures to protect the wetlands that may exist within the certified LCP area of Long Beach. In order to conform to the Chapter 3 policies of the Coastal Act, the City shall insert into the certified LCP the wetland protection standards contained in Sections 30230, 30231 and 30233 the Coastal Act. The modifications to include wetland protection policies shall be considered part of both the LIP and LUP. Only as modified does the proposed LCP amendment conform to the Chapter 3 policies of the Coastal Act which require the protection of wetlands and marine resources.

### **Permitted Uses**

The proposed LCP amendment would add commercial retail uses to the current list of commercial uses that may be permitted in Subarea 29 of SEADIP (Exhibit #7, p.36). The certified LUP designates SEADIP Subarea 29 as a "mixed use" land use district. The currently certified LCP list of permitted uses in Subarea 29 allows commercial uses, but only commercial office, restaurant and commercial recreation uses. Restaurant uses are currently permitted only south of Studebaker Road in Subarea 29. The proposed LCP amendment would allow retail uses and would delete the restaurant restriction to also allow restaurants on the north side of Studebaker Road in Subarea 29. The City-approved 67,930 square foot retail/commercial shopping center is located on the north side of Studebaker Road in Subarea 29 (Exhibits #3&4).

The certified LUP calls for the development of the Alamitos Bay Marina area with a mixture of uses that will draw more people to the shoreline. There are no specific LUP policies that would discourage retail or other visitor-serving commercial uses in SEADIP Subarea 29 as long as the specific use complies with the other LUP policies such as the wetlands protection policy recommended in Section II of this report. Subarea 29 is located approximately 350 feet from the waters of the Alamitos Bay Marina, and across the street from the one of the marina's public parking lot (Exhibit #2). The proposed addition of commercial retail uses to the currently certified list of permitted uses for Subarea 29 of SEADIP is consistent with subsection (2) of Section 30252 of the Coastal Act.

### **Section 30252 of the Coastal Act states:**

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The proposed LCP amendment will allow the development of Subarea 29 with the restaurants and retail uses proposed as part of the Marina Shore shopping center (Exhibits #3&4). Denial of the proposed LCP amendment would maintain the currently certified list of permitted uses which allows the construction of commercial offices and/or commercial recreation uses. Office uses are less likely to attract visitors to this coastal area than would restaurant and retail uses. Increased pedestrian use in the area will promote the shoreline amenities of the City and support increased public access to the coast.

Of course, the use of any site within the certified LCP area of SEADIP must also conform with the recommended wetlands protection policy stated in Section II of this report. The existence and location of wetlands on a project site would affect the type of uses that could be permitted.

Therefore, the Commission finds that the proposed LCP amendment is consistent with the policies of the Coastal Act and certified LUP to increase public access by allowing additional commercial uses that will attract more pedestrians and visitors to the area. Therefore, the proposed amendment to the list of permitted uses in Subarea 29 of SEADIP is consistent with Section 30252 of the Coastal Act and conforms to, and can carry out the provisions of the certified LUP.

### **Building Height**

The proposed LCP amendment would modify the height standards for SEADIP by allowing architectural features such as tower elements to exceed the 35-foot height limit for non-residential development. Such architectural elements would be permitted to be a maximum of 43 feet, eight feet over the currently certified height limit.

In the currently certified SEADIP Specific Plan's provisions that apply to all subareas, Item 5 (Building Height) states:

5. The maximum height of buildings shall be 30 feet for residential and 35 feet for non-residential uses, unless otherwise provided herein.

This LCP amendment request would replace the currently certified building height standard (Item 5) with the following revised standard:

5. The maximum height of buildings shall be 30 feet for residential and 35 feet for non-residential uses, unless otherwise provided herein. In non-residential developments, architectural features such as tower elements may be approved up to a height of 43 feet through the Site Plan Review process.

Although the certified LUP does not identify any specific public views in Subarea 29, public views to and along the coast are protected by Section 30251 of the Coastal Act.

### **Section 30251 of the Coastal Act states:**

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation

Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Consistent with Section 30251 of the Coastal Act, building heights must be addressed whenever visual resources are discussed. Excessively high structures can negatively impact the character of an area as well as public views. Tall buildings may be appropriate in high-density urban areas, such as the core of downtown Long Beach, but they are not appropriate in most other areas where scenic resources are considered important. A 35-foot high building is generally not considered an excessively high building, nor is a 35-foot high roofline with a 43-foot high architectural element. Many of the beachfront homes along Southern California beaches have 30 or 35-foot high roof elevations with roof access structures that extend ten feet above the roof.

In SEADIP Subarea 29, 43 foot high architectural elements over 35 foot high rooflines will not significantly impair public views to the coast. The 35-foot high buildings may block views from Pacific Coast Highway toward Alamitos Bay Marina, but the architectural elements will not. An additional eight feet over the 35-foot height limit will not block any more public view area than would a 35-foot high building.

Staff is recommending that the Commission modify the height limit standard for architectural elements so that it only applies to Subarea 29 where the proposed shopping center is located. As a matter of clarification, the Long Beach City Attorney has indicated in a letter dated May 28, 1998, that the City would not object to a change that would specifically limit the above-stated changes to SEADIP Subarea 29 only (Exhibit #9). If modified to limit the additional height to Subarea 29 only, the proposed revision would be a minor change because the additional eight feet of building height would only be allowed for architectural elements on the site of the proposed Marina shores project.

The Commission finds that as modified to apply only to Subarea 29, the proposed LCP amendment increasing the height limit for architectural elements is consistent with Chapter 3 of the Coastal Act and conforms to and can carry out the provisions of the certified LUP.

### **Curb Cuts**

The certified LCP allows curb cuts on Pacific Coast Highway, Westminster Avenue, Studebaker Road and Seventh Street only if it can be shown that inadequate access exists from the local streets in a development. Pacific Coast Highway, Westminster Avenue, Studebaker Road and Seventh Street are the main traffic arteries in the SEADIP area. These road provide vehicular access to the coast from the inland areas.

In the currently certified SEADIP specific plan's provisions that apply to all subareas, Item 14 (Curb Cuts) states:

14. No additional curb cuts shall be permitted on Pacific Coast Highway, Westminster Avenue, Studebaker Road, or Seventh Street, unless it can be shown that inadequate access exists from local streets. This restriction shall not preclude the provision of emergency access from these streets as may be required by the City.

This LCP amendment request would replace the currently certified curb cut standard (Item 14) with the following revised standard:

14. Curb cuts shall be permitted on Pacific Coast Highway, Westminster Avenue, Studebaker Road and Seventh Street subject to the approval of the City Traffic Engineer and/or CALTRANS, where appropriate.

The proposed revision is a minor change because both the currently certified standard and the proposed revised standard allow curb cuts on the main traffic arteries in the SEADIP area. The issue is not a public parking issue because there are no public parking spaces along Pacific Coast Highway in southeast Long Beach. The curb cut issue is a traffic and circulation issue. Curb cuts should be minimized in order to maximize the flow of traffic on these busy streets. Caltrans and the City Traffic Engineer are the experts in traffic and roadway design. Therefore, it is Caltrans and the City Traffic Engineer that can best determine whether inadequate access exists from local streets in new developments. In the SEADIP area, it is not likely that any curb cuts could affect public parking for beach access because there are very few, if any, on-street parking spaces and the closest beach is located over a mile away in the City of Seal Beach.

The certified LUP does not address the issue of curb cuts. The proposed amendment to the curb cut standard does not conflict with any certified LUP policies. Therefore, the proposed amendment to the curb cut standard of SEADIP conforms to, and can carry out the provisions of the certified LUP, consistent with Chapter 3 of the Coastal Act.

**C. California Environmental Quality Act (CEQA)**

Pursuant to the California Environmental Quality Act (CEQA) and the Coastal Commission's regulations [see California Code of Regulations, Title 14, Sections 13540(f), 13542(a), 13555(b)] the Commission's certification of this Local Coastal Program amendment must be based in part on a finding that it is consistent with CEQA Section 21080.5(d)(2)(A). That section of the Public Resources Code requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that for the reasons discussed in this report, if the LCP amendment is modified as suggested, there are no additional feasible alternatives or feasible mitigation measures available that could substantially reduce any adverse environmental impacts. The Commission further finds that the proposed LCP amendment is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.

CP/END